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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/064,988	09/06/2002	Tsuyoshi Fujiwara	086142-0528	1836
22428	7590	07/19/2004	EXAMINER	
FOLEY AND LARDNER SUITE 500 3000 K STREET NW WASHINGTON, DC 20007			ENGLISH, PETER C	
			ART UNIT	PAPER NUMBER
			3616	

DATE MAILED: 07/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/064,988

Applicant(s)

FUJIWARA, TSUYOSHI

Examiner

Peter C. English

Art Unit

3616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-6, 8-11, 14 and 15 is/are allowed.
- 6) ☒ Claim(s) 7, 12 and 13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 June 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>20040301</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Informal Amendment

1. The amendment filed on 02 June 2004 fails to comply with the current rules for making amendments. Specifically, brackets have been used improperly to denote deleted material in paragraph 47, claims 1, 8 and 12, and the abstract. Further, a clean version of the amended abstract has been provided. In all future amendments, the changes should be shown by strikethrough for deleted matter and underlining for added matter. An accompanying clean version is not required and should not be presented.

Drawings

2. The corrected drawing sheets filed on 02 June 2004 have been approved.

Specification

3. The specification is objected to because:

Paragraph 48 should be deleted since incorporation by reference to a foreign application is improper.

Appropriate correction is required.

Claim Objections

4. Claim 10 is objected to because of the following informalities:

In claim 10, at line 3, "a" should be "the". Note that the depressed region is introduced in claim 8, at line 8.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. Claim 4 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Art Unit: 3616

The specification fails to describe how the inboard and outboard connecting joints are formed so as to be "not symmetrical about a line dividing a section of the outer shell fabric covering the cabin-side fabric and a section of the outer shell fabric covering the window-side fabric" (claim 4). In the embodiments illustrated in Figs. 1b and 4, the joints 55 are symmetrical. No description is given of an asymmetrical arrangement.

6. Claims 7 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 7, at lines 1-2, "the outer shell fabric comprises two separate pieces of fabric" is indefinite because it is unclear how one fabric can be two pieces of fabric. The examiner suggests: at lines 1-2, change "wherein the...fabric covering" to "further comprising another, separate outer shell fabric, one of the outer shell fabrics covering"; and at line 3, change "separate pieces of fabric" to "outer shell fabrics".

In claim 13, at lines 1-3, "the layer of fabric comprises a first layer of fabric...and a second layer of fabric..." is indefinite because it is unclear how one fabric layer can be two layers of fabric. The examiner suggests: at line 2, change "first layer of fabric" to "first portion"; and at lines 2-3, change "second layer of fabric" to "second portion".

Double Patenting

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Art Unit: 3616

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 12 and 13 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15 of copending Application No. 10/064,919 in view of Hanawa et al. (JP 08169294). Claims 1-15 of Application No. 10/064,919 recite the invention substantially as claimed in the instant application except that they fail to recite that the fabric layer(s) cover depressions formed by an interior seam(s). Hanawa et al. teaches fabric layer 24 (or fabric layers 32, 33) that cover depressions formed by an interior seam 25 (or interior seams 14, 15). See Figs. 6-9. From this teaching of Hanawa et al., it would have been obvious to modify claims 1-15 of Application No. 10/064,919 by utilizing the fabric layer(s) to cover depressions formed by an interior seam(s) because this allows the shape of the air bag to be controlled by the interior seam(s), while providing a uniform surface for contacting a vehicle occupant.

This is a provisional obviousness-type double patenting rejection.

Response to Arguments

9. Applicant's arguments filed on 02 June 2004 have been fully considered.

Applicant argues that paragraph 48 is acceptable as originally filed because the foreign priority application does not contain "essential" subject matter. The examiner disagrees because nonessential subject matter may be incorporated by reference to (1) patents or applications published by the United States or foreign countries or regional patent offices, (2) prior filed, commonly owned U.S. applications, or (3) non-patent publications. A foreign priority application does not fall into any of these acceptable categories, unless the application is published by a foreign country and identified by the publication number.

With respect to the rejection under 35 USC 112, first paragraph, applicant argues that the rejection should be withdrawn because the subject matter of original claim 4 has been incorporated into the specification. The examiner disagrees because the original disclosure provides no explanation of an asymmetrical arrangement.

Art Unit: 3616

With respect to the previous prior art rejections, applicant argues that the limitation added to claims 1, 8 and 14 overcomes these rejections. The examiner agrees. With respect to claim 12, the examiner also agrees with applicant that the previous art rejection of this claim must be withdrawn since the prior art of record fails to teach a layer of fabric attached to both the window side and passenger side sheets by adhesive located at opposite ends of the layer of fabric.

Applicant has offered no arguments against the double patenting rejection. Therefore, this rejection has been maintained with respect to claims 12 and 13 since these claims have not been amended to recite the limitation added to claims 1, 8 and 14.

Allowable Subject Matter

10. Claims 1-6, 8-11, 14 and 15 are allowed.

11. Claim 7 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

Conclusion

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter C. English whose telephone number is 703-308-1377. The examiner can normally be reached on Monday through Thursday (7:00 AM - 5:00 PM).

Art Unit: 3616

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul N. Dickson can be reached on 703-308-2089. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Peter C. English
Primary Examiner
Art Unit 3616

7/12/04

pe
12 July 2004